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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/602,566	06/24/2003	Marc T. Burton Sewell		8024

7590 05/02/2008

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EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 05/02/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 10/602,566	Applicant(s) SEWELL, MARC T. BURTON	
	Examiner Jeffery A. Brier	Art Unit 2628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 07 July 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☐ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☒ Other (including any explanation in support of the above items):

See Continuation Sheet.

Continuation of 10. Other (including any explanation in support of the above items):

The Appeal Brief filed on 07/07/2007 as modified by the supplemental appeal briefs filed on 08/31/2007 and 12/10/2007 is defective with regards to the request for oral hearing found in the paragraph spanning pages 3 and 4 of the 07/07/2007 Appeal Brief. The Notification of Non-Compliant Appeal Brief mailed on 11/09/2007 made reference to this same issue and appellants 12/10/2007 response did not respond to this issue. Thus, appellant needs to in respond to this Notification of Non-Compliant Appeal Brief by filing the Oral Hearing Request papers and appropriate fees or state Appellant's intention is to have no oral hearing. Note CFR 41.47 and MPEP 1209.

37 CFR 41.47 states:

§ 41.47 Oral hearing.

(a)An oral hearing should be requested only in those circumstances in which appellant considers such a hearing necessary or desirable for a proper presentation

of the appeal. An appeal decided on the briefs without an oral hearing will receive the same consideration by the Board as appeals decided after an oral hearing.

(b)If appellant desires an oral hearing, appellant must file, as a separate paper captioned "REQUEST FOR ORAL HEARING," a written request for such hearing accompanied by the fee set forth in § 41.20(b)(3) within two months from the date of the examiner's answer or supplemental examiner's answer.

(c)If no request and fee for oral hearing have been timely filed by appellant as required by paragraph

(b) of this section, the appeal will be assigned for consideration and decision on the briefs without an oral hearing.

(d)If appellant has complied with all the requirements of paragraph (b) of this section, a date for the oral hearing will be set, and due notice thereof given to appellant. If an oral hearing is held, an oral argument may be presented by, or on behalf of, the primary examiner if considered desirable by either the primary examiner or the Board. A hearing will be held as stated in the notice, and oral argument will ordinarily

be limited to twenty minutes for appellant and fifteen minutes for the primary examiner unless otherwise ordered.

(e)(1)Appellant will argue first and may reserve time for rebuttal. At the oral hearing, appellant may only rely on evidence that has been previously entered and considered by the primary examiner and present argument that has been relied upon in the brief or reply brief except as permitted by paragraph (e)(2) of this section. The primary examiner may only rely on argument and evidence relied upon in an answer or a

supplemental answer except as permitted by paragraph

(e)(2) of this section.

(2)Upon a showing of good cause, appellant and/or the primary examiner may rely on a new argument based upon a recent relevant decision of either the Board or a Federal Court.

(f)Notwithstanding the submission of a request for oral hearing complying with this rule, if the Board decides that a hearing is not necessary, the Board will so notify appellant.

(g)Extensions of time under § 1.136(a) of this title for patent applications are not applicable to the time periods set forth in this section. See § 1.136(b) of this title for extensions of time to reply for patent applications and § 1.550(c) of this title for extensions of time to reply for ex parte reexamination proceedings.

[Added, 69 FR 49959, Aug. 12, 2004, effective Sept. 13, 2004]

MPEP 1209 states:

37 CFR *41.47(b)< provides that an appellant who desires an oral hearing before the Board must request the hearing by filing, in a separate paper >captioned

"REQUEST FOR ORAL HEARING,"< a written

request therefor, accompanied by the appropriate fee set forth in 37 CFR *41.20(b)(3)<, within 2 months after the date of the examiner's answer >or supplemental examiner's answer. Form PTO/SB/32 may be used to request an oral hearing<. This time period may only be extended by filing a request under either 37 CFR 1.136(b) or, if the appeal involves an ex parte reexamination proceeding, under 37 CFR 1.550(c).

>If the written request for an oral hearing is not filed in a separate paper captioned "REQUEST FOR ORAL HEARING," the request is improper and the appeal will be assigned for consideration and decision on the briefs without an oral hearing. Likewise, if the request is not timely filed or accompanied by the appropriate fee, the request is improper and the appeal will be assigned for consideration and decision on the briefs without an oral hearing.<

1. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffery A. Brier whose telephone number is (571) 272-7656. The examiner can normally be reached on M-F from 7:30 to 4:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Razavi, can be reached at (571) 272-7664. The fax phone Number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Jeffery A. Brier/

Primary Examiner, Division 2628